



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 06033-99

17 February 2000

SSGT [REDACTED] JR USMC
[REDACTED]
[REDACTED]

Dear Staff Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. You requested removal of two fitness reports, for 1 August to 31 December 1993 and 1 January to 7 July 1994.

It is noted that the Commandant of the Marine Corps (CMC) has removed the entire contested report for 1 January to 7 July 1994 and modified the report for 1 August to 31 December 1993 by removing the last three lines from the reviewing officer's comments.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 21 September 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice warranting complete removal of the remaining contested fitness report for 1 August to 31 December 1993. In this connection, the Board substantially concurred with the comments contained in the report of the PERB in finding that this fitness report, as amended, should stand. They were unable to find your appraisal was prejudiced by your having been on legal hold to testify for the Government in a court-martial that involved wrongdoing for which your command was investigated. In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

6033-99

IN REPLY REFER TO:
1610
MMER/PERB
SEP 21 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF
SERGEANT [REDACTED] AN [REDACTED] USMC

Ref: (a) SSgt [REDACTED] DD Forms 149(2) of 25 Jun 99
(b) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 14 September 1999 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 930801 to 931231 (AN)
- b. Report B - 940101 to 940707 (TR) ~~REMOVED~~

Reference (b) is the performance evaluation directive governing the submission of both reports.

2. The petitioner contends that both reports are substantively inaccurate evaluations of his performance and that they fail to comply with reference (b). To support his appeal, the petitioner furnishes his own statements, copies of the fitness reports, and a copy of a medical status form.

3. In its proceedings, the PERB concluded that:

a. With one minor exception, Report A is both administratively correct and procedurally complete as written and filed. At the outset, the Board emphasizes that the petitioner has cited the incorrect directive in arguing the correctness of the report. Contrary to what he believes, reference (b) **did not** require Reporting Seniors to record both height and weight. That mandate did not occur until much later. Additionally, his contention concerning an incorrect Reviewing Officer has been dispelled per the introductory comments in the "Remarks" section of the "Reviewing Officer's Certification" (to wit: "In accordance with the provisions of MCO (P)1610.7C (para 2006.4) the officer identified in block 25 has (been) authorized by the Commanding Officer, MALS-14 to review fitness reports submitted by Reporting Seniors of equivalent grade.").

(3) PERB

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b. The Board is concerned that the final comments contained in the "Remarks" section of the "Reviewing Officer's Certification" could unintentionally harm the petitioner. The Reporting Senior explains why the petitioner was in a legal hold status; however, if one did not **completely** read the Reporting Senior's statements, the inference could be taken from the Reviewing Officer's comments that the petitioner had been on legal hold as the **subject** of an action, vice as a **witness**. The Board was likewise bothered by the Reviewing Officer's inference (whether or not intended) that the petitioner was somehow to blame for the late submission of the report. Again, the Reporting Senior elaborates on that issue and took responsibility for the report's tardiness. In the interest of fairness, the Board has directed the elimination of the final three lines from the "Remarks" section of the "Reviewing Officer's Certification."

c. The removal of Report B is warranted and has been directed.

4. The Board's opinion, based on deliberation and secret ballot vote, is that Report A, as modified, should remain a part of Staff Sergeant [REDACTED] official military record. The limited corrective action identified in subparagraph 4b is considered sufficient.

5. The case is forwarded for final action.

[REDACTED]

Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps